

REMARKS

in the course of preparing and filing an Appeal Brief in this application, to appeal the Examiner's final rejections of Claims 15-21, 23, 25, and 27-39, Applicant's attorney has noticed that prior amendments had resulted in independent Claims 15 and 29 inadvertently being made identical. As the sets of dependent claims following each independent claim are parallel, that resulted in the claims on appeal being two duplicate sets.

Applicant originally sought amendment of Claims 29-39 by inclusion of such request in his Appeal Brief filed on March 8, 2005. In the subject Office Action of March 29, 2005, the Examiner required submission of such Amendment as a separate document. This Amendment is that document.

Appellant submits this Amendment to cancel Claims 29-39 inclusive as duplicative. While Appellant agrees with the Examiner's statement in the subject Office Action that amendment to cancel these claims is not a matter or right, Appellant notes that appellate review of two duplicate sets of claims is counterproductive and is burdensome to the Board of Patent Appeals and Interferences, to the Examiner and to Applicant. As having duplicate sets of claims on appeal serves no purpose, it is submitted that entry of this Amendment and cancellation of Claims 29-39 is warranted and appropriate.

It is submitted that this Amendment is appropriate under the provisions of 37 C.F.R. § 41.33 (b)(1), in that it cancels the identified Claims 29-39 to remove them from the appeal and does not affect the scope of any other pending claim in the appeal proceeding.

It is noted that entry of this Amendment will necessitate changes to the Appeal Brief previously filed, which have been called for by the Examiner in the subject Office Action. Applicant has also herein corrected some minor spelling and syntax errors. Because these changes occur at various points in the Appeal Brief and in some cases are of significant length, Applicant has enclosed herewith a substitute Brief on Appeal in which these changes, all related to cancellation of Claims 29-39, are incorporated, along with the various inclusion of Appendices called for by the Examiner. Applicant by his attorney states that the changes do not add new matter nor alter the scope or the

content of the Appeal Brief as filed, other than as required by cancellation of the identified claims and identification of the evidence identified in the Evidence Appendix. Substitution of the substitute Appeal Brief copy as required by the Examiner is therefore submitted to be appropriate as analogous to substitution of a Specification under the provisions of 37 C.F.R. § 1.125. A marked-up copy of the original Appeal Brief is also submitted in a manner analogous to submission of a marked-up Specification under ' 1.125.

Entry of this Amendment, acceptance of the substitute Appeal Brief and cancellation of Claims 29-39 are all therefore respectfully requested.

It is not believed that any fees are due with respect to this response to the Office Action, including the amendment of the claims herein or the substitute Appeal Brief. However, should any fees be due for any reason, the Patent and Trademark Office is authorized to charge all such fees to Deposit Account No. 50-1990.

Should the Examiner believe that this matter might be expedited by direct discussion of any issues raised herein, he is cordially invited to direct a telephone message to Applicant's attorney at (619) 230-7459, which will be promptly responded to.

Date: April 27, 2005

Respectfully submitted,



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